

REMARKS

Replacement drawing sheets are attached hereto.

Claims 1-3, 5, 7-10, 12 and 14 stand rejected under 35 U.S.C. §102(e) over Pryor ('036). Claims 4, 6, 11 and 13 stand rejected under 35 U.S.C. §103(a) over Pryor in view of Breed (2003/0209893). Applicant disagrees that anticipation or obviousness have been established, since Pryor does not disclose what the Examiner argues it does.

In contrast to Pryor, which utilizes "specialized datum's on objects and/or natural features of objects," the instant invention utilizes the head, body or other body parts of a vehicle driver or occupant *directly* utilizing a gesture recognition system or method. The claims have been amended to better define this distinction. Pryor neither teaches nor suggests such capabilities.

As claim 1 is now more similar to claim 8, which has always disclosed a gesture/behavior recognition system, the reader's attention will be directed to the bottom of page 4 and the top of page 5 of the Office Action, wherein the Examiner contends that Pryor discloses:

a gesture/behavior recognition system for recognizing and identifying the person's motions (Fig. 15 and column 22, lines 1-5 wherein the human expressions and hand or body gestures are used in the game and column 14, lines 47-54 wherein motions of both the car controls and the driver or passengers are used).

Applicant respectfully disagrees. First, column 22, lines 1-5 are strictly limited to some kind of a game, a "flirting" game, and have nothing to do with vehicle comfort or control. Column 14, lines 47-54, discloses that "It is also noted that the same TV camera used to sense switch positions, wheel position, duct position, seat position (for example using datum 1045), head rest position (for example using datum 1046), and a variety of other aspects of physical positions or motions of both the car controls and the driver or passengers," does not include "tracking the position, velocity or acceleration of the head, body or other body parts of a vehicle driver or passenger, and determining the position or motion of the driver or passenger using gesture or behavior recognition," as now claimed by Applicant. The limitations of system claim 8 set forth similar elements. Anticipation may be established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Systems, 730 F.2d 1440, 1444, 221 USPQ

385, 388 (Fed. Cir. 1984). Moreover, anticipation requires the presence of all elements of a claimed invention as arranged in the claim, such that a disclosure "that 'almost' meets that standard does not 'anticipate'." Connell v. Sears, Roebuck Co., 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

In this case, given that the prior reference neither teaches nor suggests Applicant's claim limitations *in combination*, anticipation is expressly precluded. It doesn't matter that Pryor may disclose certain aspects of Applicant's invention in different sections of the cited reference, since unless they are brought together in a meaningful way to one of ordinary skill in the art, they remain disconnected concepts incapable of anticipating.

With respect to the combination of Pryor and Breed, given that Pryor does not teach or suggest all of the elements of the claims rejected under 35 U.S.C. §102(e), *prima facie* obviousness has not been established. Moreover, there is no teaching or suggestion *from the prior art* to combine these references, as required through appropriate procedure. In rejecting claims under 35 U.S.C. §103, the Examiner must provide a reason why one having ordinary skill in the pertinent art would have been led to combine the cited references to arrive at Applicant's claimed invention. There must be something *in the prior art* that suggests the proposed combination, other than the hindsight gained from knowledge that the inventor choose to combine these particular things in this particular way. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988). The Examiner is also required to make specific findings on a suggestion to combine prior-art references. In Re Dembeczak, 175 F.3d 994, 1000-01, 50 USPQ2d 1614, 1617-19 (Fed. Cir. 1999). Furthermore, given that the '893 application includes references to related applications that are voluminous in scope, Applicant cannot determine at which point the subject matter relied upon by the Examiner was actually disclosed. Accordingly, Breed may or may not be prior art, regardless of its relationship to the instant invention.

Based upon the foregoing amendments and comments, Applicant believes that all claims are in condition for allowance. To expedite prosecution, questions regarding this application may be directed to the undersigned by telephone, facsimile or electronic mail.

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- 8 -

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